

FEDERAL COURT OF AUSTRALIA

Josan v Minister for Immigration and Border Protection [2017] FCA 1418

Appeal from: *Josan v Minister for Immigration and Border Protection*
[2016] FCCA 493

File number(s): VID 262 of 2016

Judge(s): **DAVIES J**

Date of judgment: 29 November 2017

Catchwords: **MIGRATION** – appeal of dismissal of application for judicial review – refusal of a Skilled (Residence) (Class VB) Subclass 886 (Skilled-Sponsored) VISA – application for leave to cross-appeal – whether breach of ss 359A and 362A of the *Migration Act 1958* (Cth)

Legislation: *Migration Act 1958* (Cth), ss 359A, 362A, 375A

Cases cited: *Burton v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 1455; (2005) 149 FCR 20
Davis v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCA 686
Minister for Immigration and Border Protection v Dhillon [2014] FCAFC 157; (2014) 227 FCR 525
SZBYR v Minister for Immigration and Citizenship [2007] HCA 26; (2007) 81 ALJR 1190

Date of hearing: 29 November 2016

Date of last submissions: 25 September 2017

Registry: Victoria

Division: General Division

National Practice Area: Administrative and Constitutional Law and Human Rights

Category: Catchwords

Number of paragraphs:	31
Counsel for the Appellant:	The Appellant appeared in person
Counsel for the First Respondent:	N Wood
Solicitor for the First Respondent:	Sparke Helmore Lawyers
Counsel for the Second Respondent:	The Second Respondent filed a submitting notice, save as to costs

ORDERS

VID 262 of 2016

BETWEEN: **HARVINDER SINGH JOSAN**
 Appellant

AND: **MINISTER FOR IMMIGRATION AND BORDER**
 PROTECTION
 First Respondent

MIGRATION REVIEW TRIBUNAL
Second Respondent

JUDGE: **DAVIES J**

DATE OF ORDER: **29 NOVEMBER 2017**

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The time within which to file the cross-appeal be extended.
3. The cross-appeal be dismissed.
4. Subject to order 5, there be no order as to costs.
5. Any application to set aside or vary order 4 be made within 5 days.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

DAVIES J:

1 The appellant was refused a Skilled (Residence) (Class VB) Subclass 886 (Skilled-Sponsored) Visa (“**Skilled (Residence) (Class VB) Visa**”) by a delegate of the first respondent (“**the Minister**”) on the basis that he did not satisfy Public Interest Criterion 4020. The Migration Review Tribunal (“**the Tribunal**”) affirmed the decision of the delegate and the Federal Circuit Court of Australia (“**the FCC**”) dismissed the appellant’s application for judicial review of the Tribunal’s determination. The FCC, however, declared that:

In the events and circumstances which have happened the Second Respondent, the Migration Review Tribunal (now the Administrative Appeals Tribunal), erred in finding that the Applicant, Harvinder Singh Josan, breached Public Interest Criterion 4020, having made that finding as a result of a failure to observe the requirements of procedural fairness

(“**the declaration**”) and ordered the Minister to pay the appellant’s costs of the proceedings (from the date that the Minister was taken to have considered the appellant’s amended application). The failure to observe the requirements of procedural fairness related to the failure of the Tribunal to disclose the existence of a certificate issued under s 375A of the *Migration Act 1958* (Cth) (“**the Act**”) (“**the s 375A certificate**”) to the appellant.

2 The appellant appealed the decision of the FCC and the Minister applied for an extension of time to cross-appeal the FCC’s finding that the Tribunal had breached s 362A of the Act and also the making of the declaration. An extension of time was required because the notice of cross-appeal was not filed within time. The appeal and application for extension of time were heard but prior to delivery of judgment, the Full Federal Court heard an appeal from the decision in *Singh v Minister for Immigration & Anor* [2016] FCCA 2464. As the Full Court decision had the potential to bear upon the matters to be decided in this case, the final determination of this matter was stood over pending the Full Court’s decision.

3 The Full Court delivered judgment on 19 December 2016: *Minister for Immigration and Border Protection v Singh* [2016] FCAFC 183 (“**Singh**”). Following the dismissal of the Minister’s application for special leave to the High Court, further submissions were sought from, and provided by, the parties on the impact of the Full Court decision in *Singh* in this case. In view of the Full Court decision in *Singh* and the fact that the Tribunal had not disclosed the existence of the s 375A certificate to the appellant, the Minister accepted that the Tribunal had failed to afford the appellant procedural fairness before deciding that the

appellant had failed to satisfy Public Interest Criterion 4020. However, the Minister has maintained his cross-appeal to the extent that he has contended that the FCC erred in concluding that there was utility in issuing the declaration.

- 4 For the reasons that follow, the appeal should be dismissed, the application for an extension of time to cross-appeal granted, and the cross-appeal dismissed.

VISA REQUIREMENTS

- 5 The criteria to be satisfied to obtain a Skilled (Residence) (Class VB) Visa were, at the relevant time, contained in Clause 886 of Schedule 2 of the *Migration Regulations 1994* (Cth) (“**the Regulations**”). The criteria include that: (1) the skills of the applicant have been assessed by the relevant assessing authority as suitable for the applicant’s nominated skilled occupation: clauses 886.212 and 886.223 of the Regulations; and (2) the applicant satisfies Public Interest Criterion 4020: clause 886.225(a) of the Regulations.
- 6 The relevant assessing authority was Trade Recognition Australia. Trade Recognition Australia utilised Uniform Assessment Criteria in considering an application for assessment of training and work experience. By clause 12 of the Uniform Assessment Criteria, applicants had to provide evidence to Trade Recognition Australia of relevant and directly-related work experience equalling not less than 900 hours.
- 7 Public Interest Criterion 4020 relevantly provided as follows:
- (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Migration Review Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
 - (a) the application for the visa;
 - ...
 - (2) The Minister is satisfied that during the period:
 - (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse the application;

the applicant and each member of a family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

...

8 “Bogus document” was defined at the relevant time in s 5(1) of the *Migration Act 1958* (Cth) (“**the Act**”) to mean:

A document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

BACKGROUND

9 The appellant is a national of India who first came to Australia as the holder of a student visa. After obtaining a Certificate III in Food Processing (Retail Baking) and a Diploma in Business Management from Della International College, the appellant applied for the Skilled (Residence) (Class VB) Visa. In his application, the appellant identified his occupation as “pastry cook” and indicated that his skills had been assessed by Trades Recognition Australia. The appellant provided a copy of a letter from Trades Recognition Australia advising him that his application for a skills assessment had been successful. That skills assessment was in part based on two reference letters that the appellant had provided to the authority, purportedly signed by Dominic Arena on behalf of the business O’Heas Bakery & Deli (“**O’Heas Bakery**”). The first, undated, reference letter indicated that the appellant had performed more than 920 hours of work as a pastry cook for that business on a voluntary basis between 8 February 2007 and 10 February 2008. The second letter, dated 22 August 2008, “confirm[ed] that [the appellant] was working at O’Heas as a pastry cook from 8 February 2007 until 10 February 2008”.

10 A delegate of the Minister refused to grant the appellant a skilled visa on the basis that the delegate did not accept that the appellant had been employed for 900 hours at O’Heas Bakery. The delegate considered that there was reason to believe that the letters of reference were fraudulent and therefore that the skills assessment was a “bogus document” within paragraph (c) of the definition of that expression under the Act. The delegate’s belief that the reference letters were fraudulent was based on evidence that a Mr Carmine Amarante had pleaded guilty to the manufacture and sale of work references attesting to work at O’Heas Bakery, which were created so that persons applying for the Skilled (Residence) (Class VB) Visa could provide evidence of relevant work experience.

THE TRIBUNAL'S DECISION

- 11 The appellant applied to the Tribunal for review of the delegate's decision. On or about the same date, the appellant formally requested access under s 362A of the Act to all documents held by the Tribunal in connection with the conduct of the review. The Tribunal complied with that request by providing the appellant with access to all the documents that it then held.
- 12 Subsequently the Tribunal issued a summons to produce documents to the Secretary of the Department of Immigration and Border Protection under s 363(3) of the Act seeking certain documents containing "information that may link the [appellant] ... to the Amarante investigations". The Tribunal also requested that the Secretary provide any "non-disclosure certificates that may be relevant".
- 13 The Secretary provided certain material to the Tribunal and also gave a certificate under s 375A of the Act as follows:

I certify that, in accordance with s 375A of the Migration Act 1958, the disclosure, otherwise than to the Migration Review Tribunal of any matter or information contained in electronic files **AFP Employer Statement AMARANTE Carmine – MRT.pdf, Amarante – Summary of Facts – MRT.pdf and Amarante – Summary of Taped Record of Interview – MRT.pdf** would be contrary to the public interest because:

- (a) the electronic files AFP Employer Statement Amarante Carmine – MRT.pdf, Amarante – Summary of Facts – MRT.pdf and Amarante – Summary of Taped Record of Interview – MRT.pdf contain third party details not relevant to this particular merits review.

As s 375A applies to the documents/information identified above, the MRT must do all things necessary to ensure that the document or third party information is not disclosed to any other person other than to a member of the MRT as constituted for the purposes of this particular review, pursuant to s 375A(2)(b) of the Migration Act 1958.

- 14 Following the Tribunal hearing, the Tribunal, pursuant to s 359A of the Act, invited the appellant to comment on, or respond to, certain information that the Tribunal considered would, subject to the appellant's comment or response, be the reason, or a part of the reason for affirming the decision under review ("**the s 359A letter**"). The s 359A letter set out the "particulars of the information" but did not disclose the s 375A material, and advised that:

This information is relevant because it may lead the Tribunal to find that Dominic Arena from O'Heas Bakery was involved in providing false work reference letters and related documents to students for the purposes of obtaining skills assessments from TRA for their Skilled visa applications. The Tribunal may find that you did not complete over 900 hours of work experience at O'Heas Bakery as claimed and that the documents regarding your work experience at that business that you had provided to TRA were based on a false or misleading statement. If the Tribunal reasonably

suspects that the TRA skills assessment that you obtained was as a result of a false or misleading statement, whether or not made knowingly, the Tribunal may find that the skills assessment is a ‘bogus document’. This may lead the Tribunal to find that you had given, or caused to be given, to the Minister or an officer, a bogus document in relation to the application for the visa.

The tribunal may also find that the ‘explanation letter’ is a bogus document on the basis of Mr Amarante’s evidence that he created the documents located at his residence during the search on 29 September 2009. The Tribunal may find that by providing the ‘explanation letter’ referred to above in relation to your skills assessment application to TRA, that you had given, or caused to be given, to the relevant assessing authority, a bogus document. The Tribunal may also find that you have given a bogus document to the Minister or an officer in relation to the application for the visa.

If the Tribunal makes these findings, it may not be satisfied that you meet Public Interest Criterion (PIC) 4020 and if so, you would not satisfy cl.886.225 which means that you would not meet a requirement for the grant of the visa for which you have applied.

- 15 A response to the s 359A letter was given by the appellant’s lawyers. The Tribunal then gave its decision and affirmed the decision of the delegate not to grant the appellant the Skilled (Residence) (Class VB) Visa, finding that the second reference letter was a bogus document within paragraph (b) of the definition of that expression. The Tribunal based its finding in part on evidence that an identical letter had been found during a search of the property of Mr Amarante who had admitted manufacturing the document. The Tribunal therefore held that the appellant did not satisfy Public Interest Criterion 4020(1)(a). Having regard to that finding the Tribunal did not consider it necessary to consider whether the skills assessment itself was a “bogus document” or to reach any concluded view as to whether the appellant in fact worked the 900 hours claimed.

FEDERAL CIRCUIT COURT’S JUDGMENT

- 16 The appellant applied to the FCC for judicial review of the Tribunal’s decision, initially seeking an order quashing the Tribunal’s decision and a writ of mandamus directed to the Tribunal requiring it to determine the appellant’s application according to law.
- 17 An amended application was subsequently filed under which the appellant sought by way of relief only a declaration that the Tribunal “erred in finding that the [appellant] had breached Public Interest Criterion 4020, having made the finding in breach of his entitlement to access to [sic] the written material before the Migration Review Tribunal pursuant to his request made under s 362A of the *Migration Act 1958* (Cth)”. The appellant’s argument in support of the declaratory relief relied heavily on the Full Court’s decision in *Minister for Immigration and Border Protection v Dhillon* [2014] FCAFC 157; (2014) 227 FCR 525 (“**Dhillon**”). In

Dhillon, the Full Court held that the Tribunal determined that Mr Dhillon did not satisfy Public Interest Criterion 4020 without affording Mr Dhillon a fair hearing to which he was entitled under s 360 of the Act because, in reaching its decision, the Tribunal had relied on material that it had wrongly decided that Mr Dhillon was not entitled to have access to under s 362A(1) of the Act. Although the Full Court affirmed the decision of the Tribunal on other grounds, the Court made a declaration that the Tribunal erred in its decision in relation to the Public Interest Criterion 4020.

18 In this case, the appellant argued that the Tribunal had breached both s 362A and s 359A(1) of the Act and that he was thereby denied procedural fairness by the Tribunal in reaching its decision that he did not satisfy Public Interest Criterion 4020. The FCC held that there had been a breach of procedural fairness as contended and that there was utility in granting the declaration sought, reasoning that “declaratory relief will tend to mitigate any reputational damage the [appellant] may suffer by the Tribunal’s decision concerning the bogus document” and that the Court “should follow as precedents the like cases and decisions of the Full Court of the Federal Court in *Dhillon* and of Logan J in *Sandhu*”. *Sandhu* was a reference to *Sandhu v Minister for Immigration and Border Protection* [2015] FCA 987; (2015) 236 FCR 63.

19 A further argument was raised at the hearing and considered by the FCC, namely that the Tribunal committed jurisdictional error in not performing its statutory task because it did not lawfully address and consider the appellant’s statutory declaration that he had worked and completed more than 920 hours of work as a pastry cook at O’Heas Bakery. It was argued that if the evidence had been considered and accepted, it could have led to the Tribunal exercising the waiver power in Public Interest Criterion 4020(4). The FCC rejected the argument, holding that the reasons of the Tribunal disclosed that it had taken the statutory declaration into consideration in weighing up all the evidence.

THE APPEAL

20 The Notice of Appeal, which appeared to have been prepared by the appellant himself, raised three grounds of appeal as follows:

1. The Federal Circuit Court erred in law and in fact in finding that the three-year period for the purposes of Public Interest Criterion 4020(2) expired on 21 February 2016.
2. The Federal Circuit Court should have found that the three-year period expires on 1 June 2017.

3. The Federal Circuit Court erred in law by failing to quash the Second Respondent's decision and remit it for reconsideration.

Particulars

The Federal Circuit Court held that the Second Respondent's decision was affected by jurisdictional error and should have held that the decision, by reason of Public Interest Criterion 4020, had an apparent and continuing legal effect on the Applicant. In those circumstances, it was not open to the Federal Circuit Court to grant declaratory relief which identified jurisdictional error, but not to grant certiorari or mandamus.

CROSS-APPEAL

- 21 The cross-appeal raised two grounds. In view of the Minister's concession, it is only necessary to refer to ground 2, which is as follows:

Further or alternatively, the trial judge erred in making the declaration in order 1 (set out above). There was no utility in making that declaration. In particular, any "*general reputational benefit*" obtained by the making of the declaration was illusory, including because the declaration did not affect the decision by the delegate of the Minister made on 21 February 2013 to refuse to grant Mr Josan a visa on the basis that he had failed to satisfy Public Interest Criterion 4020.

CONSIDERATION OF THE APPEAL

- 22 The grounds as formulated were not intelligible and appear to be misconceived. No written submissions were filed by the appellant and it appeared from the oral submissions put by the appellant, who represented himself at the hearing of the appeal, that he was not in fact challenging that the exclusionary three year period by force of Public Interest Criterion 4020(2) runs from the date of decision of the delegate (21 February 2013), as found by the FCC. The issue of the expiry of the three year exclusionary period only became relevant in the context of the FCC's consideration of the utility of granting declaratory relief. It appears from the reasons of the FCC that it was submitted on behalf of the appellant (who was represented below) that if declaratory relief was not granted, the three year exclusionary period would run from the date of the Tribunal's decision, being 2 June 2014 until 1 June 2017 whereas if the declaratory relief was granted, the period would run from the date of the decision of the delegate, namely 21 February 2013 and so expire on 21 February 2016. In response, the Minister argued that the three year period ran from the date of the decision of the delegate. The FCC accepted the Minister's submission but concluded that the appellant was entitled to declaratory relief nonetheless for two reasons, namely that declaratory relief would tend to mitigate any reputational damage that the appellant may suffer by the Tribunal's decision concerning the bogus document and, secondly, that the Court should follow as precedents, the like cases and decisions of *Dhillon* and *Sandhu*.

- 23 In the circumstances, notwithstanding grounds 1 and 2 of the Notice of Appeal, it is not necessary to address whether the Tribunal was correct to conclude that the three year period expired on 21 February 2016, not 1 June 2017.
- 24 In the written submissions filed on behalf of the appellant relating to the impact of the Full Court decision in *Singh*, it was contended that the Court should quash the Tribunal's decision given the Minister's acceptance that the Tribunal did not afford the appellant procedural fairness. It was argued that the Tribunal's breach of the rules of procedural fairness precluded it from affording the appellant a "real and meaningful" hearing as required by s 360 of the Act. It was further submitted that the breach of procedural fairness and the Tribunal's conclusion that the appellant had given it a "bogus document" infected the exercise of discretion in relation to the question of "closely related" course of study and nominated occupation and once the Tribunal decided that the appellant did not satisfy Public Interest Criterion 4020 for the purposes of cl 886.225 of the Regulations, it was obliged to affirm the decision. As such, it was argued, the consideration of the "closely related" criterion was a nullity and had no practical significance for the outcome of the review. These submissions are not accepted.
- 25 Under cl 886.211(2)(b) of the Regulations a criterion to be satisfied at the time of application is that each degree, diploma or trade qualification used to satisfy the two year study requirement is "closely related" to the applicant's nominated skilled occupation. The Tribunal found that the appellant's Certificate III in Food Processing (Retail Baking) was closely related to his nominated occupation of pastry cook but this course did not meet the two year study requirement and accordingly it was necessary to consider whether the appellant's Diploma in Business Management satisfied the cl 886.211(2)(b) criterion. The Tribunal held that the Business Management qualifications were not closely related. The Tribunal reasoned at [55]-[57] as follows:

In the Tribunal's view, having regard to the subjects that the applicant has been assessed as competent in the Diploma in Business Management courses he undertook, these qualifications are not closely related to the duties or tasks of a pastry cook. According to ASCO, a pastry cook prepares and bakes buns, cakes, biscuits and pastry goods. The Tribunal does not consider that any of the units in the Business Management courses, which include manage meetings and manage people performance, are relevant to the tasks and job description of a pastry cook as set out in ASOC.

It was submitted that the applicant undertook business study because the college told them that they needed to have business and he needed to know about business for management and how to run a business. However, the applicant had nominated the

occupation of a pastry cook and not that of a business owner. It was submitted by the applicant's representative that at the time, the Immigration department was providing specific guidance on its website as to what would meet the requirement as being closely related and that the department had said that they would accept a Certificate III in Carpentry and business diploma as being closely related. It was submitted that this information was given to applicants and practitioners and that he thinks that any applicant is entitled to rely on that. It was submitted that hundreds, if not thousands, would have been granted their permanent residency on the basis of this combination of course. It was also submitted that it was unfair for the Tribunal to assess it differently. In his written submission, the representative added that the applicant had a legitimate expectation at the time he applied for his visa that this combination of course would be found to be closely related to his nominated occupation. The representative referred to a previous submission where examples of acceptable and not acceptable combinations were provided by the Department. The Tribunal acknowledges that the department had given examples of combinations based on its view as to whether certain qualifications would be "genuinely useful in operating their own business" or would have practical application in their work. However, the existence of previous departmental guidance on this issue is not binding on the Tribunal. The Tribunal does not consider that whether a qualification is "useful" sufficiently reflects the requirement that each qualification be closely related to the nominated occupation. The Tribunal notes that the Department's guidelines were subsequently revised, apparently in response to judgments indicating that their interpretation was incorrect: see for example *Shafiuzzaman v MIAC* [2011] FMCA 874 at [32] and *Prasad v MIAC* [2012] FCA 591. The Tribunal has thus considered for itself whether the applicant's Business Management qualifications are closely related to the nominated occupation of pastry cook.

Having considered the units undertaken in the business management courses, it does not accept that business management qualifications are closely related to the occupation of pastry cook.

[Errors in original]

26 The Tribunal's reasons disclose that the Tribunal gave separate and reasoned consideration as to whether the closely related criterion was met and it was plainly open for the reason given by the Tribunal to conclude that the closely related criterion was not met. The contention that the breach of procedural fairness and the Tribunal's conclusion that the appellant had given it a "bogus document" infected the exercise of discretion in relation to the question of "closely related" course of study and nominated occupation is without substance. The appellant had been represented below and correctly conceded that, irrespective of any conclusion concerning the claim for procedural unfairness, the Tribunal had made lawful findings that the appellant did not satisfy the "closely related" criterion applicable to his visa application and thus the decision would otherwise be affirmed on that ground.

27 The appeal should be dismissed.

CONSIDERATION OF THE CROSS-APPEAL

- 28 The Minister was out of time to file his Notice of Cross-Appeal and requires an extension of time. As he was out of time by slightly less than two weeks, and an adequate explanation was provided as to why the cross-appeal was not filed within time, an extension of time should be granted.
- 29 The Minister argued that the FCC erred in concluding that there was utility in making the declaration to protect the appellant's reputation, submitting first that the FCC was wrong to conclude that protection of the reputation of the appellant was a reason or foundation for the making of the declaration in *Dhillon*, and secondly that the declaration served no utility in protecting the appellant's reputation because the declaration did not, and could not, change the fact that the appellant had been found by the delegate to have provided a "bogus document" in support of his application for a visa in circumstances that did not involve a denial of procedural fairness and the delegate's finding remained undisturbed.
- 30 In my view the FCC has not been shown to have erred in concluding that there was utility in making the declaration. In *Dhillon*, the Full Court granted a declaration in similar circumstances where it was held that the Tribunal had wrongly denied the appellant access to material in reaching its decision that the appellant did not satisfy Public Interest Criterion 4020, but also held that the Tribunal had not erred in finding that the appellant did not meet the "closely related" requirement. At [15] the Full Court stated:

The conclusion that the decision of the Tribunal on the Public Interest Criterion was erroneous because of the failure to provide the redacted material under s 362A is also of practical significant to Mr Dhillon and the outcome of any future visa application he may make. The finding of Mr Dhillon having given, or caused to be given, a bogus document or false information precludes him under Public Interest Criterion 4020 from being granted a visa for a period of three years unless justified by "compelling circumstances": see *Vyas v Minister for Immigration, Multicultural Affairs and Citizenship* [2013] FCCA 1226; (2013) 281 FLR 247; *Kandel v Minister for Immigration* [2014] FCCA 1479. The Tribunal's decision to the extent that it is based on acceptance of a failure to meet the Public Interest Criterion should not be affirmed if made in breach of s 362A in circumstances where access to the redacted material might, as was the case here, reasonably have affected the decision of the Tribunal on that ground.

This reasoning equally applies in the present case. As the FCC noted the appellant had always asserted that he is truly a qualified pastry cook and was in truth employed for 920 hours by O'Heas Bakery and there were never any bogus or counterfeit documents submitted to the Minister. Whilst the delegate's decision has not been disturbed, access to the s 375A material might, as was said in *Dhillon*, reasonably have affected the decision of the Tribunal on that

ground. As submitted for the appellant, the declaration may have practical implications for any future visa application by the appellant, including satisfaction of the character test under Public Interest Criterion 4001, and contrary to the Minister's submission, the utility of the declaration is not illusory.

CONCLUSION

- 31 The appeal should be dismissed, the extension of time to cross-appeal granted and the cross-appeal dismissed. As a substantial part of the hearing was taken up with argument on the grounds of the cross-appeal that have been abandoned in consequence of the Full Court decision in *Singh* and the Minister has been unsuccessful on his remaining ground, I consider it appropriate that there be no order as to costs.

I certify that the preceding thirty-one (31) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies.

Associate:

Dated: 29 November 2017